

AN ACT

ENTITLED, An Act to define telecommunication services for taxation purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 10-45-6.1 be amended to read as follows:

10-45-6.1. Except as provided in § 10-45-6.2, there is hereby imposed a tax of four percent upon the gross receipts from providing any telecommunication service that originates or terminates in this state and that is billed or charged to a service address in this state, or that both originates and terminates in this state. However, the tax imposed by this section does not apply to:

- (1) Any eight hundred or eight hundred type service unless the service both originates and terminates in this state;
- (2) Any sale of a telecommunication service to a provider of telecommunication services, including access service, for use in providing any telecommunication service; or
- (3) Any sale of interstate telecommunication service provided to a call center that has been certified by the secretary of revenue to meet the criterion established in § 10-45-6.3 and the call center has provided to the telecommunications service provider an exemption certificate issued by the secretary indicating that it meets the criterion.

If a call center uses an exemption certificate to purchase services not meeting the criterion established in § 10-45-6.3, the call center is liable for the applicable tax, penalty, and interest.

Section 2. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as follows:

The term, telecommunications service, as used in this chapter means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term, telecommunications service, includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code,

or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. Telecommunications service does not include:

- (1) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;
- (2) Installation or maintenance of wiring or equipment on a customer's premises;
- (3) Tangible personal property;
- (4) Advertising, including directory advertising;
- (5) Billing and collection services provided to third parties;
- (6) Internet access service;
- (7) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6), as of June 1, 2007, and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
- (8) Ancillary services; or
- (9) Digital products delivered electronically, including but not limited to software, music, video, reading materials, or ring tones.

The term, telecommunications service, includes the following services:

- (1) "800 service," any telecommunications service that allows a caller to dial a toll-free

number without incurring a charge for the call;

- (2) "900 service," an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. A 900 service does not include the charge for the collection of services provided by the seller of the telecommunications services to the subscriber or service or product sold by the subscriber to the subscriber's customer;
- (3) "Fixed wireless service," a telecommunications service that provides radio communication between fixed points;
- (4) "Mobile wireless service," a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, where either the origination point or termination point, or both, of the transmission, conveyance, or routing are not fixed;
- (5) "Paging service," a telecommunications service that provides transmission of coded radio signals for the purpose of activation specific pages. Such transmissions may include either messages or sounds, or both;
- (6) "Prepaid calling service," the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;
- (7) "Prepaid wireless calling service," a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount;

- (8) "Private communication service," a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels; and
- (9) "Value-added non-voice data service," a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

Section 3. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as follows:

The term, telecommunications service, as used in this chapter means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term, telecommunications service, includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. Telecommunications service does not include:

- (1) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

- (2) Installation or maintenance of wiring or equipment on a customer's premises;
- (3) Tangible personal property;
- (4) Advertising, including directory advertising;
- (5) Billing and collection services provided to third parties;
- (6) Internet access service;
- (7) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6), as of June 1, 2007, and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
- (8) Ancillary services; or
- (9) Digital products delivered electronically, including but not limited to software, music, video, reading materials, or ring tones.

The term, telecommunications service, includes the following services:

- (1) "800 service," any telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call;
- (2) "900 service," an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. A 900 service does not include the charge for the collection of services provided by the seller of the telecommunications services to the subscriber or service or product sold by the subscriber to the subscriber's customer;
- (3) "Fixed wireless service," a telecommunications service that provides radio communication between fixed points;

- (4) "Mobile wireless service," a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, where either the origination point or termination point, or both, of the transmission, conveyance, or routing are not fixed;
- (5) "Paging service," a telecommunications service that provides transmission of coded radio signals for the purpose of activation specific pages. Such transmissions may include either messages or sounds, or both;
- (6) "Prepaid calling service," the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;
- (7) "Prepaid wireless calling service," a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount;
- (8) "Private communication service," a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels; and
- (9) "Value-added non-voice data service," a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act

on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

An Act to define telecommunication services for taxation purposes.

I certify that the attached Act
originated in the

HOUSE as Bill No. 1010

Chief Clerk

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1010

File No. _____

Chapter No. _____

Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State